



**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION
1190 St. Francis Drive
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CONSTITUENT AGENCIES:

Environment Department
State Engineer & Interstate Stream Commission
Game and Fish Department
Oil Conservation Division
Department of Agriculture
State Parks Division
Soil and Water Conservation Commission
Bureau of Mines and Mineral Resources
Members-at-Large

**Minutes of the
New Mexico Water Quality
Control Commission Meeting
July 10, 2001**

The New Mexico Water Quality Control Commission (WQCC) meeting was held on July 10, 2001, at 9:00 a.m. at the State Capitol Building, Room 317, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

Members present:

Peter Maggiore	Chair, New Mexico Environment Department
John Whipple	State Engineer & Interstate Stream Commission
David Johnson	State Parks Division
Julie Maitland	Department of Agriculture
Larry Bell	Department of Game and Fish
Howard Hutchinson	Soil and Water Conservation Commission
Lynn Brandvold	Bureau of Geology and Mineral Resources
Bill Olson	Oil Conservation Division
Dr. Conrad Keyes	Member-at-Large
Irene Lee	Member-at-Large

Others present:

Daniel Rubin	WQCC Counsel
Maria Voyles	WQCC Administrator
Regina Romero	NMML
Maura Hanning	NMED-GWQB
Kelly Bitner	Neptune and Co.
Cathy Ratcliff	
J. Steven Glass	private citizen
Cecilia Abeyta	NMFLB
Bill Brancard	NM State Land Office
Bruce Thompson	UNM Civil Engineer
Sue Umshler	L & R Planning Associates
Mike Coffeman	NMED – SWQB
Cindy Huntsman	

Caylor Ross	private citizen
Cheryl James	NM Utility Operator Certification Board member
Glenn Saums	NMED – SWQB
David Hogge	NMED – SWQB
Erik Galloway	NMED – WWMD
Julie Tsatsaros	NMED – SWQB
Kristin Dors	NMED – SWQB

Chairman Maggiore called the meeting to order.

Item 1: Roll call.

Maria Voyles, WQCC Administrator took roll call.

Item 2: Approval of the agenda.

Commissioner Olson moved to accept the agenda. Commissioner Maitland seconded the motion. The motion passed unanimously.

Item 3: Approval of the minutes of the June 10, 2001, meeting.

Commissioner Olson moved to accept the minutes as corrected. Commissioner Brandvold seconded the motion. The motion passed unanimously.

Item 4: Formal approval and adoption into the State's Water Quality Management Plan of the TMDLs for Ponil Creek (metals, chronic aluminum, temperature and turbidity) and Middle Ponil Creek (temperature and turbidity)

David Hogge, SWQB, provided handouts and made a brief presentation. The handout/presentation was read into the record. Mr. Hogge stated that these TMDLs will complete the Cimarron Watershed TMDLs. This will be the first watershed completed.

Commissioner Hutchinson asked if anyone attended the meeting on May 2, 2001.

Mr. Hogge stated that a few people showed up and that there is a copy of the sign-in sheet in the packets provided. Mr. Hogge also stated that the meeting lasted about 3 hours.

Ms. Tsatsaros stated that they had several participants at the meeting: including people from the Philmont Boy Scout Ranch, CS Ranch, NRCS, and Berry Engineering.

Commissioner Whipple asked about the TMDL for aluminum in Ponil Creek. Commissioner Whipple asked if the aluminum levels were naturally occurring and if the higher levels were due to the spring runoff.

Mr. Hogge stated that the spring runoff causes the higher levels and is associated with sediment transport.

Commissioner Whipple asked about the TMDL for temperature for Ponil Creek and if there was any consideration in the model of the impact of cold pools associated with groundwater inputs

along the stream reach. Mr. Hogge stated that the model has an input for groundwater factor but that the model does not take into account withdrawals of groundwater from newly planted vegetation.

Commissioner Whipple stated that he did not see any qualitative recognition of the occurrence of cold pools in this TMDL. Was there any consideration given to cold pools?

Mr. Hogge stated that there was no consideration made to cold pools in the in the model. There is an inflow aspect to the model.

Commissioner Whipple also asked what was the effect of shade upon the energy budget of the stream.

Did the model take into account the idea of establishing riparian vegetation to create shading on the stream?

Mr. Hogge stated that the model did not take that into account. It does include topographic information and recognizes riparian vegetation needed to keep the stream within the standards.

Mr. Hogge stated there are several aspects to the model and the segment inflow factor on page 9 estimates all the cumulative flow that will accrue from lateral groundwater inflow.

Commissioner Whipple stated that riparian habitat has become an issue statewide. Commissioner Whipple questioned if the area where the thermograph was deployed in the Ponil Creek is representative of the entire creek.

Mr. Hogge stated that the area is representative and that the thermograph was deployed under a rock overhang that is fairly stable.

Commissioner Hutchinson asked if the USGS gauging site was the only location that was used?

Mr. Hogge stated that this is the lowest site used.

Commissioner Hutchinson also asked if bankflow went all the way across the channel and if this was typical of New Mexico streams in as much as that it doesn't allow for a tall vegetative shade to be established.

Mr. Hogge stated that a peak flow would go all the way across the valley. Mr. Hogge stated that there are several impacts that have taken away the vegetation. Mr. Hogge stated that this area is fairly stable but farther up the stream there are impacts that have diminished the vegetative cover.

Commissioner Olson moved to approve the TMDLs for temperature and turbidity on Ponil and Middle Ponil Creeks, and the TMDL for metals on chronic aluminum on Ponil Creek as presented by the Department. Commissioner Hutchinson seconded the motion. The motion passed unanimously.

Item #5: Appointment of Utility Operator Certification Advisory Board Members.

Cheryl James, Utility Operators Certification Advisory Board, joined the WQCC members for the debate and vote on this item.

Dr. Davis and Mike Coffman appeared on behalf of the NMED. Mr. Coffman provided handouts.

Dr. Davis stated that the Commission is required to act on this per § 61-22-4 NMSA 1978. Dr. Davis stated they have provided copies of the qualifications of the various persons under consideration. Dr. Davis requested that the Commission take action to appoint the individuals recommended by the Advisory Board.

Chairman Maggiore stated that per § 61-33-4(G) NMSA, two members of the Utility Operator Certification Advisory Board be present for the discussion and vote. Only one member of the Board was present. (Cheryl James)

Mr. Coffman stated that Emundo Gutierrez is a member and was notified, but Mr. Coffman was unable to contact him this morning. Mr. Coffman stated that they have tried to contact the alternates, but all are unavailable.

Mr. Rubin asked if this was to be postponed until the next meeting, what would be the ramifications? Mr. Coffman stated that there would not be a problem as their next meeting is not until September.

Dr. Davis asked Mr. Rubin if it would be possible to have the Commission act on this even though a member is not present.

Mr. Rubin stated that this could go either way, as the Operators Certification Act does not mention a quorum.

Dr. Keyes requested a resume on Cindy Huntsman. Ms. Huntsman was in attendance.

Commissioner Bell stated that 20.7.4.29 of the Administrative Code states that the Commission shall appoint new board members at its first meeting of each fiscal year. There appears to be a conflict between the statute and what the regulation requires. Would statute take precedent?

Mr. Rubin stated that the statute always takes precedent and upon review of 74-6-3, it does appear to be a gray area.

Mr. Coffman stated that the member from Santa Fe is in Texico today.

Commissioner Johnson moved to take this matter under advisement and vote on this issue today. Commissioner Brandvold seconded the motion. After discussion, the motion was withdrawn.

Commissioner Brandvold moved to approve the candidates that have been recommended. Commissioner Johnson seconded the motion. The motion passed unanimously.

Commissioner Keyes asked if Ms. Huntsman would give a brief resume before the vote. Ms. Huntsman stated her qualifications and the Commission proceeded with the vote. The motion passed unanimously.

Item #6: Proposed hearing location for October hearing, for mainstem Rio Grande segment 2101 (now NMAC 20.6.4.101) possibly moved to Las Cruces. (continuation of the Triennial Review)

Chairman Maggiore requested that the meeting be moved to Las Cruces, where the segment 2101 is located. He asked whether it would be possible to have a site tour of the area included in the hearing. Chairman Maggiore requested that half a day be allowed for the site tour.

Dr. Keyes asked if the Commission would like to see the entire reach or only parts.

Chairman Maggiore stated that the Commission should view the entire stretch. Dr. Keyes stated that it would take a minimum of one day to view the entire stretch – possibly a day and a half.

Mr. Rubin suggested viewing only a couple of spots.

Chairman Maggiore stated that the hearing date is October 9, 2001. Chairman Maggiore stated that the hearing would start at 8:00 am on October 9, 2001.

Commissioner Brandvold moved to hold the hearing in Las Cruces beginning October 9, 2001, and last as long as necessary and have Chairman Maggiore be the hearing officer. Commissioner Johnson seconded the motion. The motion passed unanimously.

Dr. Davis stated that the notice must be prepared and submitted to the New Mexico Register by August 1, 2001, for publication.

Chairman Maggiore stated the proposed location is the WERC Physical Science Building at NMSU. The means of transportation and sites to be visited will be determined at a later date.

Item #7. Review and action on NMED's "Petition to Amend the Utility Operator Certification Regulations, 20.7.4 NMAC and Request for Hearing." WQCC-01-15(r)

Dr. Davis made a brief presentation. The petition was provided to the Commission. Dr. Davis requested that the Commission set a hearing on this matter.

Dr. Keyes asked if the Legislature placed this new language in the definition so that irrigation systems, which would deliver public water supply by these conveyances to the location for treatment, will become public water supply systems?

Dr. Davis stated that this is for the delivery of potable water directly for consumption, not delivery of raw water to a treatment facility. Dr. Davis also stated that they are aware of one ditch system in the State that does deliver water directly for consumption.

Cindy Huntsman and Cheryl James sat with the Commission for the purpose of voting.

Commissioner Maitland moved to set the hearing for September 11, 2001. Commissioner Hutchinson seconded the motion. The motion passed unanimously.

Item #8: Attorney General report on recent amendments to New Mexico Water Quality Act.: HB 535 and SB99

Copies of the bills were provided to the Commissioners. Dan Rubin stated that HB 535 will add a Commissioner and the Governor's office will appoint the new Commissioner and establish the term. (total of 12 commissioners) Mr. Rubin also stated that there must be a majority decision in any quorum meeting.

Mr. Rubin stated that SB99 changed section 74-6-4(c) to add the language "credible scientific data".

Commissioner Hutchinson asked what should be used to determine credible scientific data?

Mr. Rubin stated that the U.S. Supreme Court definition should be used. Mr. Rubin will provide copies of the Daubert case to the Commissioners.

Item #9: Reconsideration of the open meetings act resolution.

Mr. Rubin stated that this was put on the agenda for the Commission to possibly take action on how to avoid late deliveries of items for the Commissioners. The Commission chose to continue with the current procedure and just attempt to get items sooner. Dr. Keyes suggested that if the Commissioners are not comfortable with dealing with an item they have not had a chance to review, the item could be tabled until the next meeting or could be removed during the approval of the agenda.

Item #10: Other business.

Mr. Hogge stated that SWQB will be requesting action on TMDL's for approximately 25 other water bodies and 50 parameters, to include the Gila - San Francisco Watershed, Middle Rio Grande, and Red River Watershed.

Dr. Davis provided updated copies of various statutes and regulations pertaining to the WQCC to Commissioners.

Commissioner Olson asked about the status of the Department's review of the petition from Game and Fish to use Antimycin A on the Upper West Fork of the Gila River. Dr. Davis provided copies of the review of the petition to all Commissioners.

Chairman Maggiore asked about the status of the SWQB budget in regards to overnight per diem.

Dr. Davis stated that it will be taken care of.

Item #11: Next Meeting.

Chairman Maggiore stated that the next meeting will be August 14, 2001. Commissioner Brandvold moved to adjourn the meeting. Commissioner Olson seconded the motion. The motion passed unanimously.

Chairperson